



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-48,832-05

EX PARTE RAMIRO RUBI IBARRA, Applicant

**ON APPLICATION FOR POST-CONVICTION WRIT OF HABEAS CORPUS
FROM CAUSE NO. 1996-634-C2D IN THE 54TH JUDICIAL DISTRICT COURT
McLENNAN COUNTY**

Per curiam.

ORDER

We have before us a subsequent application for a writ of habeas corpus filed pursuant to the provisions of Texas Code of Criminal Procedure Article 11.071 § 5, and a motion to stay Applicant's execution.¹

In September 1997, a jury convicted Applicant of the March 1987 killing of a 16-year-old girl committed in the course of sexually assaulting her. *See* TEX. PENAL CODE §

¹ All references to "Articles" in this order refer to the Texas Code of Criminal Procedure unless otherwise specified.

19.03(a). Based on the jury’s answers to the special issues submitted pursuant to Article 37.0711, the trial court sentenced Applicant to death. Art. 37.0711 § 2(g). This Court affirmed Applicant’s conviction and sentence on direct appeal. *Ibarra v. State*, 11 S.W.3d 189 (Tex. Crim. App. 1999). We also denied relief on Applicant’s initial writ of habeas corpus application. *Ex parte Ibarra*, No. WR-48,832-01 (Tex. Crim. App. Apr. 4, 2001) (not designated for publication).

On June 19, 2003, Applicant filed his first subsequent writ application in the convicting court. Applicant raised two allegations in this application. He claimed that: (1) his execution would violate the Eighth Amendment’s prohibition against the execution of the intellectually disabled; and (2) his death sentence violates the Sixth Amendment “because the jury’s verdict did not include a determination of an essential element of capital murder: that [Applicant] is not [intellectually disabled].”

While Applicant’s first subsequent application was pending, Applicant filed a second subsequent application in which he raised a single claim that he was entitled to a new trial because state authorities violated their obligations under Article 36 of the Vienna Convention on Consular Relations. This Court ultimately determined that Applicant had not met the requirements of proving that he is intellectually disabled, and we dismissed his other claims. *Ex parte Ibarra*, Nos. WR-48,832-02 & WR-48,832-03 (Tex. Crim. App. Sept. 26, 2007) (not designated for publication).

On May 27, 2008, Applicant filed in the convicting court his third subsequent

habeas application (our -04). In that application, Applicant argued for an equitable exception to Section 5 that would allow him to raise an ineffective assistance of trial counsel claim. We determined that Applicant's claim failed to meet the requirements of Article 11.071 § 5, and we dismissed it. *Ex parte Ibarra*, No. WR-48,832-04 (Tex. Crim. App. Oct. 1, 2008) (not designated for publication).

On February 12, 2021, Applicant filed the instant writ application in the trial court in which he raises seven claims. Specifically, Applicant asserts that: he is intellectually disabled and cannot constitutionally be executed (claim 1); new developments in the sciences of DNA, microscopic hair comparison, and eyewitness identification reveal that evidence presented at trial was unreliable (claims 2, 3, and 4); the State presented false and misleading evidence (claims 5 and 6); and Applicant's execution would violate due process (claim 7). After reviewing the record, we have determined that Applicant's claims 1 and 2 (regarding intellectual disability and new DNA science) meet the dictates of Article 11.071 § 5(a). We therefore remand those claims to the trial court for a review of their merits. The remaining claims do not meet the requirements of Article 11.071 § 5(a) and should not be reviewed. Applicant's execution is stayed pending resolution of the remanded claims.

IT IS SO ORDERED THIS THE 24th DAY OF FEBRUARY, 2021.

Do Not Publish